**Capital Film Laboratories, Inc.** *and* **International Alliance of Theatrical Stage Employees, AFL-CIO.** Case 5-CA-13601

March 24, 1982

## DECISION AND ORDER

BY MEMBERS FANNING, JENKINS, AND ZIMMERMAN

Upon a charge filed on August 11, 1981, by International Alliance of Theatrical Stage Employees, AFL-CIO, herein called the Union, and duly served on Capital Film Laboratories, Inc., herein called Respondent, the General Counsel of the National Labor Relations Board, by the Acting Regional Director for Region 5, issued a complaint and notice of hearing on September 24, 1981, against Respondent, alleging that Respondent had engaged in and was engaging in unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and (1) and Section 2(6) and (7) of the National Labor Relations Act, as amended. Copies of the charge and complaint and notice of hearing before an administrative law judge were duly served on the parties to this proceeding. On November 9, 1981, the Acting Regional Director issued an Order extending to November 23, 1981, the time for filing an answer to the complaint. Respondent failed to file an answer to the complaint. On November 24, 1981, counsel for the General Counsel advised Respondent that, absent the filing of an answer by December 4, 1981, a Motion for Summary Judgment would be filed.

On December 10, 1981, no answer to the complaint having been filed, counsel for the General Counsel filed directly with the Board a Motion for Summary Judgment. Subsequently, on December 15, 1981, the Board issued an order transferring the proceeding to the Board and a Notice To Show Cause why the General Counsel's Motion for Summary Judgment should not be granted. Respondent failed to file a response to the Notice To Show Cause and therefore the allegations of the Motion for Summary Judgment stand uncontroverted.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Upon the entire record in this proceeding, the Board makes the following:

### Ruling on the Motion for Summary Judgment

Section 102.20 of the Board's Rules and Regulations, Series 8, as amended, provides as follows:

> The respondent shall, within 10 days from the service of the complaint, file an answer thereto. The respondent shall specifically admit, deny, or explain each of the facts alleged in the complaint, unless the respondent is without knowledge, in which case the respondent shall so state, such statement operating as a denial. All allegations in the complaint, if no answer is filed, or any allegation in the complaint not specifically denied or explained in an answer filed, unless the respondent shall state in the answer that he is without knowledge, shall be deemed to be admitted to be true and shall be so found by the Board, unless good cause to the contrary is shown.

The complaint and notice of hearing specifically state that, unless an answer to the complaint is filed within 10 days from the service thereof, "all of the allegations contained in the complaint shall be deemed to be admitted to be true and may be so found by the Board." As of the date of filing of the Motion for Summary Judgment, no answer had been filed by Respondent. Furthermore, Respondent has failed to file a response to the Notice To Show Cause in which it could have attempted to explain its failure to answer.

In view of Respondent's failure to answer, and no good cause having been shown therefor, the uncontroverted allegations of the complaint are deemed admitted and found to be true in accordance with the rule set forth above. Accordingly, we grant the General Counsel's Motion for Summary Judgment.

On the basis of the entire record, the Board makes the following:

### FINDINGS OF FACT

#### I. THE BUSINESS OF RESPONDENT

Respondent, a Delaware corporation, is engaged in the processing of motion picture film at its Washington, D.C., facility. In the 12 months preceding issuance of the complaint, a representative period, Respondent caused to be purchased and received in interstate commerce materials and supplies valued in excess of $50,000 from points located outside the District of Columbia.

We find, on the basis of the foregoing, that Respondent is, and has been at all times material herein, an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act, and that it will effectuate the policies of the Act to assert jurisdiction herein.

#### II. THE LABOR ORGANIZATION INVOLVED

International Alliance of Theatrical Stage Employees, AFL-CIO, is a labor organization within the meaning of Section 2(5) of the Act.

### III. THE UNFAIR LABOR PRACTICES

The Union represented all of Respondent's employees at its Washington, D.C., location in a unit appropriate for collective bargaining.[1] Respondent has been a party to successive collective-bargaining agreements with the Union, the most recent of which expires by its terms on May 31, 1983.

On July 10, 1981, Respondent closed its Washington, D.C., facility and laid off all of the technical employees at that location. By letter dated July 13, 1981, the Union requested Respondent to bargain, *inter alia*, concerning the effects of the closing and layoffs. Since on or about July 13, 1981, and at all times thereafter, Respondent has refused to bargain collectively with the Union as the exclusive representative of the employees in the appropriate unit with respect to the effects of the closing of Respondent's Washington, D.C., facility and with respect to the resulting layoffs.

Accordingly, we find that, by the aforesaid conduct, Respondent has engaged in, and is engaging in, unfair labor practices, within the meaning of Section 8(a)(1) and (5) of the Act.[2]

### IV. THE EFFECT OF THE UNFAIR LABOR PRACTICES UPON COMMERCE

The activities of Capital Film Laboratories, Inc., set forth in section III, above, occurring in connection with its operations described in section I, above, have a close, intimate, and substantial relationship to trade, traffic, and commerce among the several States and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

### V. THE REMEDY

Having found that Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(5) and (1) of the Act, we shall order that it cease and desist therefrom, and, upon request, bargain collectively with the Union as the exclusive representative of all employees in the appropriate unit and, if an understanding is reached, embody such understanding in a signed agreement. Further, in order to recreate in some practicable manner a situation in which the parties' bargaining is not entirely devoid of economic consequences for Respondent, a limited additional backpay requirement shall be included.[3] Thus, Respondent shall pay unit employees backpay at the rate of their normal wages when last in Respondent's employ from 5 days after the date of this Decision and Order until the occurrence of the earliest of the following conditions: (1) the date Respondent bargains to agreement with the Union on those subjects pertaining to the effects of the closing of Respondent's operations on its employees; (2) a bona fide impasse in bargaining; (3) the failure of the Union to request bargaining within 5 days of this Decision and Order, or to commence negotiations within 5 days of Respondent's notice of its desire to bargain with the Union; or (4) the subsequent failure of the Union to bargain in good faith; but in no event shall the sum to any of these employees exceed the amount he or she would have earned as wages from July 10, 1981, the date on which Respondent terminated its operations, to the time he or she secured equivalent employment elsewhere, or the date on which Respondent shall have offered to bargain, whichever occurs sooner; provided, however, that in no event shall this sum be less than these employees would have earned for a 2-week period at the rate of their normal wages when last in Respondent's employ.[4] Interest on all backpay awarded herein shall be paid in the manner prescribed in *Florida Steel Corporation*, 231 NLRB 651 (1977). See, generally, *Isis Plumbing & Heating Co.*, 138 NLRB 716 (1962).[5]

To further effectuate the policies of the Act, Respondent shall be required to establish a preferential hiring list of all terminated unit employees following the system of seniority, provided for in the collective-bargaining agreement, or, if there is none, that which is customarily applied to the conduct of Respondent's business and, if Respondent ever resumes operations in the Washington, D.C., area, it shall be required to offer these employees reinstatement. If, however, Respondent resumes operations at its original Washington, D.C., facility, Respondent shall be required to offer unit employees reinstatement to their former or substantially equivalent positions.[6]

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[1] The complaint states that the appropriate unit consists of all technical employees employed by Respondent at its Washington, D.C., location. No exclusions are set forth in the complaint.

[2] *Burgmeyer Bros., Inc.*, 254 NLRB 1027 (1981); *Merryweather Optical Company*, 240 NLRB 1213 (1979); *Stagg Zipper Corp., as Successor to Stagg Tool & Die Corp.*, 222 NLRB 1249 (1976); *Automation Institute of Los Angeles, Inc., d/b/a West Coast Schools*, 208 NLRB 724 (1974); *Transmarine Navigation Corporation and its Subsidiary, International Terminals, Inc.*, 170 NLRB 389 (1968), remanded 380 F.2d 933 (9th Cir. 1967), remanding 152 NLRB 998 (1965).

[3] Backpay orders are appropriate means of remedying 8(a)(5) violations of the type involved herein, even where such violations are unaccompanied by a discriminatory shutdown of operations. Cf. *Royal Plating and Polishing Co., Inc.*, 148 NLRB 545, 548 (1964), and cases cited therein.

[4] *Transmarine Navigation Corporation and its subsidiary, International Terminals, Inc.*, 170 NLRB 389 (1968); *Burgmeyer Bros., Inc., supra* at 1029.

[5] In accordance with his dissent in *Olympic Medical Corporation*, 250 NLRB 146 (1980), Member Jenkins would award interest on the backpay due based on the formula set forth therein.

[6] *Drapery Manufacturing Co., Inc., and American White Goods Company*, 170 NLRB 1706 (1968); *Burgmeyer Bros., Inc., supra.*

Furthermore, in view of the fact that Respondent is no longer in operation and its former employees may be in different locations, we shall order Respondent to mail each of its employees employed on the date it ceased operations copies of the attached notice signed by Respondent.

## CONCLUSIONS OF LAW

1. Capital Film Laboratories, Inc., is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.
2. International Alliance of Theatrical Stage Employees, AFL-CIO, is a labor organization within the meaning of Section 2(5) of the Act.
3. By the acts described in section III, above, Respondent has engaged in, and is engaging in, unfair labor practices within the meaning of Section 8(a)(1) and (5) of the Act.
4. The aforesaid unfair labor practices are unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act.

## ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board hereby orders that the Respondent, Capital Film Laboratories, Inc., Washington, D.C., its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Refusing to bargain with International Alliance of Theatrical Stage Employees, AFL-CIO, concerning the effects on its employees in the appropriate unit of the closing of Respondent's Washington, D.C., facility and the resulting layoffs.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them in Section 7 of the Act.

2. Take the following affirmative action which the Board finds will effectuate the policies of the Act:

(a) Upon request, bargain collectively with the above-named Union with respect to the effects on its employees of its decision to close its Washington, D.C., facility and lay off all technical employees and reduce to writing any agreement reached as a result of such bargaining.

(b) Pay the terminated unit employees their normal wages for the period set forth in the section of this Decision and Order entitled "The Remedy."

(c) Establish a preferential hiring list of all employees in the appropriate unit following the system of seniority provided for in the collective-bargaining agreement or, if there is none, that which is customarily applied to the conduct of Respondent's business, and, if operations are ever resumed in the Washington, D.C., area, offer reinstatement to those employees. If, however, Respondent resumes its operations at the original Washington, D.C., facility, it shall offer all those in the appropriate unit reinstatement to their former or substantially equivalent positions.

(d) Preserve and, upon request, make available to the Board or its agents, for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of backpay due under the terms of this Order.

(e) Mail a copy of the attached notice marked "Appendix"[7] to each employee in the appropriate unit who was employed by Respondent at its Washington, D.C., facility immediately prior to Respondent's closing of its Washington, D.C., facility. Copies of said notice, on forms provided by the Regional Director for Region 5, after being signed by Respondent's authorized representative, shall be mailed immediately upon receipt thereof, as herein above directed.

(f) Notify the Regional Director for Region 5, in writing, within 20 days from the date of this Order, what steps Respondent has taken to comply herewith.

[7] In the event that this Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice reading "Posted by Order by the National Labor Relations board" shall read "Posted pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

## APPENDIX

### NOTICE TO EMPLOYEES
### POSTED BY ORDER OF THE
### NATIONAL LABOR RELATIONS BOARD
### An Agency of the United States Government

WE WILL NOT refuse to bargain with International Alliance of Theatrical Stage Employees, AFL-CIO, over the effects on our employees in the appropriate unit of the decision to close our Washington, D.C., facility, and the resulting layoffs.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in Section 7 of the Act.

WE WILL, upon request, bargain collectively with International Alliance of Theatrical Stage Employees, AFL-CIO, concerning the effects on our employees of our decision to close the Washington, D.C., facility and WE WILL

reduce to writing any agreement reached as a result of such bargaining.

WE WILL pay the terminated unit employees who were employed at the above facility their normal wages for a period required by a Decision and Order of the National Labor Relations Board.

WE WILL establish a preferential hiring list of all terminated employees in the bargaining unit following the system of seniority provided for in the collective-bargaining agreement, or, if there is none, that which is customarily applied to the conduct of our business and, if we resume operations in the Washington, D.C., area, we shall offer these employees reinstatement. If, however, we resume our operations at the original Washington, D.C., facility, said unit employees shall be offered reinstatement to their former or substantially equivalent positions.

CAPITAL FILM LABORATORIES, INC.